A **ZI PUBLICATIONS SDN BHD & ANOR v. KERAJAAN NEGERI SELANGOR; KERAJAAN MALAYSIA & ANOR (INTERVENER)**

FEDERAL COURT, PUTRAJAYA
RAUS SHARIF PCA
ZULKEFLI AHMAD MAKINUDIN CJ (MALAYA)
B ABDULL HAMID EMBONG FCJ
AHMAD MAAROP FCJ
ABU SAMAH NORDIN FCJ
[PETITION NO: 1-12-2012(B)]
28 SEPTEMBER 2015

C

CONSTITUTIONAL LAW: *Legislation – Validity of impugned legislation – Declaration that impugned provision null and void, application for – Confiscation of books on suspicion of commission of offences under s. 16 of Syariah Criminal Offences (Selangor) Enactment 1995 – Whether an offence against precepts of Islam*
D *– Whether Selangor State Legislative Assembly (SSLA) had power to enact law – Whether only Parliament had power to legislate matter – Whether art. 10 of Federal Constitution should be read with arts. 3(1), 11, 74(2) & 121 – Whether SSLA acted within constitutional framework of Federal Constitution – Whether impugned legislation valid and ultra vires Federal Constitution – Whether Muslim in*
E *Malaysia subjected to both general laws and state laws*

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The first petitioner, ZI Publications Sdn Bhd, was a publishing company and the second petitioner was the majority shareholder and director of the company. In May 2012, the first petitioner published a book 'Allah, Kebebasan dan Cinta' ('the book'), the Malay translation of a book titled
H 'Allah, Love and Liberty' written by a Canadian author, Irshad Manji. On 29 May 2012, the Enforcement Division of the Selangor Islamic Affairs Department raided the first petitioner's office and confiscated 180 copies of the book on suspicion of commission of offences under s. 16 of the Syariah Criminal Offences (Selangor) Enactment 1995 ('the impugned section').
I Consequently, on 7 March 2013, the second petitioner was charged before the Syariah Court Selangor with offences under the impugned section. Hence, this petition was filed by the petitioners seeking a declaration that the impugned section was invalid as the Selangor State Legislative Assembly ('SSLA') had no power to enact such a law, as it was a matter which only

Parliament had the power to legislate pursuant to art. 10(2)(a) of the Federal Constitution ('the Constitution'). The issues that arose were (i) whether the SSLA had the power to enact a law which was restrictive or has the potential to restrict freedom of expression; and (ii) alternatively, whether the SSLA could enact the impugned section in contravention of Part II of the Constitution.

Held (dismissing petition)
Per Raus Sharif PCA delivering the judgment of the court:

(1) It is an established principle of constitutional construction that no one provision of the Constitution can be considered in isolation. That particular provision must be brought into view with all the other provisions bearing upon that particular subject. Thus, art. 10 of the Constitution must be read in particular with art. 3(1) (which declares Islam as the religion of the Federation), art. 11 (which guarantees every person's right to profess and practise his religion and to propagate it), art. 74(2) (the power conferred on the Legislature of a State to make laws in respect of any matter enumerated in the State List, Ninth Schedule which clearly allows the Legislature of a State for 'creation and punishment of offences by persons professing the religion of Islam against precepts of that religion ...') and art. 121 (which provides that the High Court which were established pursuant to art. 121(1) of the Constitution shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts). There was no doubt what the SSLA did in this case was within the constitutional framework of the Constitution. (paras 17-21)

(2) The purpose of the SSLA in enacting the impugned section is clear *ie* to control religious publication which was contrary to Islam. It is also a measure to prohibit the dissemination of any wrongful belief and teaching among Muslims, through publication of any book or document or any form of record containing anything which is contrary to Islamic law. What is contrary to Islamic law is without doubt against the precepts of Islam. Thus, the SSLA was acting within its legislative power in enacting the impugned section. It was an offence against the precepts of Islam and precepts of Islam was not found in the Federal List. In consequence, there was no merit in the petitioners' argument that in enacting the impugned action, the SSLA was in fact enacting on a matter in the Federal List. The impugned section enacted by the SSLA clearly fell within the scope of precept of Islam. It was not a matter included in the Federal List and the punishment imposed was within the limit set by s. 2 of the Syariah Courts (Criminal Jurisdiction) Act 1965. The impugned section was therefore valid and not *ultra vires* the Constitution. (paras 27 & 28)

(3) A Muslim in Malaysia is not only subjected to the general laws enacted by Parliament but also to the State laws of religious nature enacted by Legislature of a State. This is because the Constitution allows the

A Legislature of a State to legislate and enact offences against the precepts of Islam. Taking the Constitution as a whole, it is clear that it is the intention of the framers of our Constitution to allow Muslims in this country to be also governed by Islamic personal law. Thus, a Muslim in this country is therefore subjected to both the general laws enacted by
B Parliament and also the State laws enacted by the Legislature of a State. (para 31)

Bahasa Malaysia *Translation Of Headnotes*

Pempetisyen pertama, ZI Publications Sdn Bhd ialah sebuah syarikat
C penerbitan dan pempetisyen kedua ialah pemegang saham majoriti dan pengarah syarikat tersebut. Pada bulan Mei 2012, pempetisyen pertama menerbitkan sebuah buku 'Allah, Kebebasan dan Cinta' ('buku'), terjemahan bahasa Melayu buku bertajuk 'Allah, Love and Liberty' ditulis oleh seorang pengarang Kanada, Irshad Manji. Pada 29 Mei 2012, Bahagian Penguatkuasa Jabatan Agama Islam Selangor menyerbu pejabat pempetisyen pertama dan
D merampas 180 naskhah buku tersebut kerana disyaki melakukan kesalahan di bawah s. 16 Enakmen Kesalahan Jenayah Syariah (Selangor) 1995 ('seksyen yang dipersoalkan'). Lantaran itu, pada 17 Mac 2013 pempetisyen kedua telah dipertuduh oleh Mahkamah Syariah Selangor dengan kesalahan di bawah seksyen yang dipertikaikan. Justeru, petisyen ini telah difailkan
E oleh pempetisyen-pempetisyen, memohon deklarasi bahawa seksyen yang dipersoalkan adalah tidak sah kerana Dewan Perundangan Negeri Selangor ('DPNS') tidak mempunyai kuasa untuk menggubal undang-undang sebegitu kerana ia adalah suatu perkara yang hanya Parlimen mempunyai kuasa menggubal menurut per. 10(2)(a) Perlembagaan Persekutuan
F ('Perlembagaan'). Isu-isu yang berbangkit adalah (i) sama ada DPNS mempunyai kuasa untuk menggubal satu undang-undang yang terbatas atau mempunyai potensi untuk menyekat kebebasan bersuara; dan (ii) secara alternatif, sama ada DPNS boleh menggubal seksyen yang dipertikaikan bertentangan dengan Bahagian II Perlembagaan.

G **Diputuskan (menolak petisyen)**
Oleh Raus Sharif PMR menyampaikan penghakiman mahkamah:

(1) Adalah prinsip mantap pentafsiran Perlembagaan bahawa tiada peruntukan Perlembagaan yang boleh dipertimbangkan secara berasingan. Peruntukan yang tertentu itu mesti dipertimbangkan
H bersama-sama semua peruntukan-peruntukan lain berkaitan dengan hal perkara tertentu. Justeru, per. 10 Perlembagaan harus dibaca khususnya dengan per. 3(1) (yang mengisytiharkan Islam sebagai agama Persekutuan), per. 11 (yang menjamin hak setiap orang untuk menganut dan mengamalkan agama dan menyebarkannya), per. 74(2) (kuasa yang
I dikurniakan kepada badan Perundangan Negeri untuk membuat undang-undang berkenaan dengan apa-apa perkara termaktub dalam Senarai Negeri, Jadual Kesembilan yang dengan jelas membenarkan badan Perundangan Negeri untuk 'pewujudan dan penghukuman kesalahan yang dilakukan oleh orang-orang yang menganut agama Islam terhadap

perintah agama itu ...' dan per. 121 (yang memperuntukkan bahawa Mahkamah Tinggi yang ditubuhkan di bawah per. 121(1) Perlembagaan tidak mempunyai bidang kuasa dalam apa-apa perkara yang merangkumi bidang kuasa Mahkamah Syariah). Tidak terdapat keraguan bahawa apa yang DPNS lakukan dalam kes ini adalah dalam rangka kerja perlembagaan Perlembagaan Persekutuan.

(2) Tujuan DPNS menggubal seksyen yang dipersoalkan adalah jelas iaitu untuk mengawal penerbitan keagamaan yang bertentangan dengan Islam. Ia juga merupakan satu langkah untuk melarang penyebaran mana-mana kepercayaan dan ajaran salah dalam kalangan orang Islam melalui penerbitan apa-apa buku atau dokumen atau sebarang bentuk rekod yang mengandungi sesuatu yang bertentangan dengan undang-undang Islam. Apa yang bertentangan dengan undang-undang Islam adalah, tidak diragui, bertentangan dengan panduan Islam. Justeru, DPNS telah bertindak dalam kuasa perundangan dalam menggubal seksyen yang dipersoalkan. Ia adalah satu kesalahan terhadap panduan Islam dan panduan Islam tidak terdapat dalam Senarai Persekutuan. Natijahnya hujahan pempetisyen bahawa dalam menggubal tindakan yang dipersoalkan DPNS sebenarnya menggubal sesuatu perkara dalam Senarai Persekutuan, adalah tidak bermerit. Seksyen yang dipersoalkan oleh DPNS jelas terangkum dalam skop panduan Islam. Ia bukan satu perkara yang termasuk dalam Senarai Persekutuan dan hukuman dikenakan adalah dalam had yang ditetapkan oleh s. 2 Akta Mahkamah Syariah (Bidang Kuasa Jenayah) 1965. Seksyen yang dipersoalkan dengan itu sahih dan tidak *ultra vires* Perlembagaan Persekutuan.

(3) Orang Islam di Malaysia bukan saja tertakluk kepada undang-undang awam yang digubal oleh Parlimen tetapi juga kepada undang-undang Negeri bersifat keagamaan yang digubal oleh Badan Perundangan Negeri. Ini kerana Perlembagaan membenarkan Badan Perundangan Negeri untuk menggubal dan menguatkuasakan kesalahan terhadap panduan Islam. Mengambil Perlembagaan secara keseluruhannya, jelas bahawa adalah niat perangka-perangka Perlembagaan untuk membenarkan orang Islam di negara ini untuk juga ditadbir oleh undang-undang peribadi Islam. Justeru, orang Islam di negara ini dengan itu tertakluk kepada kedua-dua undang-undang awam yang digubal oleh Parlimen dan juga undang-undang Negeri yang digubal oleh Badan Perundangan Negeri.

Case(s) referred to:

Danaharta Urus Sdn Bhd v. Kekatong Sdn Bhd [2004] 1 CLJ 701 FC ***(refd)***

Fathul Bari Mat Jahya & Anor v. Majlis Agama Islam Negeri Sembilan & Ors [2012] 4 CLJ 717 FC ***(refd)***

Mamat Daud & Ors v. The Government of Malaysia [1988] 1 CLJ 11; [1988] 1 CLJ (Rep) 197 SC ***(refd)***

Sulaiman Takrib v. Kerajaan Negeri Terengganu; Kerajaan Malaysia (Intervener) & Other Cases [2009] 2 CLJ 54 FC ***(refd)***

Legislation referred to:

Federal Constitution, arts. 3(1), 4(4), 10(1)(a), (2)(a), 11(4), 74(2), 76(1)(a), (b), (c), 121(1), (1A)
Syariah Courts (Criminal Jurisdiction) Act 1965, s. 2
Syariah Criminal (Negeri Sembilan) Enactment 1992, s. 53(1)
Syariah Criminal Offences (Selangor) Enactment 1995, s. 16
Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001, ss. 10, 14

For the petitioners - Malik Imtiaz (Nizam Bashir, Pavendeep Singh & Chan Wei June with him); M/s Bashir & Co
For the 1st respondent - Ahmad Fuad Othman (Mohamad Mustaffa P Kunyalam & Rafiqha Hanim Mohd Rosli with him); State Legal Advisor, Selangor
For the 2nd respondent - Suzana Atan; AG's Chambers
For the 3rd respondent - Mubashir Mansor (Wan Ahmad Dzaffran Wan Kamaruddin, Damian Keithan & Alif Ridhwan Mohd Yusof with him); M/s Hisham Sobri & Kadir

Reported by Suhainah Wahiduddin

JUDGMENT

Raus Sharif PCA:

Introduction

[1] This petition was filed pursuant to art. 4(4) of the Federal Constitution and leave was granted by this court on 8 April 2013. The petitioners are seeking for a declaration that s. 16 of the Syariah Criminal Offences (Selangor) Enactment 1995 (the impugned section) is invalid. The impugned section reads as follows:

> 16. Religious publication contrary to Islamic law.
>
> (1) Any person who –
>
> (a) prints, publishes, produces, records or disseminates in any manner any book or document or any other form of record containing anything which is contrary to Islamic law; or
>
> (b) has in his possession any such book, document or other form of record for sale or for the purpose of otherwise disseminating it,
>
> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.
>
> (2) The Court may order any book, document or other form of record referred to in subsection (1) to be forfeited and destroyed notwithstanding that no person may have been convicted of an offence in connection with such book, document or other form of record.

[2] The petition is premised on the basis that the impugned section has the effect of restricting and/or has the potential to restrict freedom of expression, a matter upon which Selangor State Legislative Assembly (SSLA) has no

power to legislate. It is a matter which only Parliament has the power to legislate pursuant to art. 10(2)(a) of the Federal Constitution.

[3] In this petition, the petitioners named the Selangor State Government as the respondent. Subsequently, the Federal Government and the Majlis Agama Islam Selangor (MAIS) were added in as interveners to the proceedings.

Background Facts

[4] The background facts leading to the filing of the petition are these. The first petitioner, ZI Publications Sdn Bhd is a publishing company. The second petitioner, a Muslim named Mohd Ezra bin Mohd Zaid is the majority shareholder of the company. He is also the director of the company.

[5] In May 2012, the first petitioner published a book "Allah, Kebebasan dan Cinta" (the book), the Malay translation of a book titled "Allah, Love and Liberty" written by a Canadian author, Irshad Manji.

[6] On 29 May 2012, the Enforcement Division of the Selangor Islamic Affairs Department raided the first petitioner's office and confiscated 180 copies of the book on suspicion of commission of offences under the impugned section.

[7] Consequently on 7 March 2013, the second petitioner was charged before the Syariah Court Selangor with offences under the impugned section. Hence, this petition was filed by the petitioners seeking a declaration that the impugned section is invalid as the SSLA has no power to enact such law.

Issues To Be Determined

[8] The petitioners submitted the following issues to be determined by this court:

(a) Whether the SSLA has the power to enact a law which is restrictive and/or has the potential to restrict freedom of expression (first issue);

(b) Alternatively, whether the SSLA can enact the impugned section in contravention of Part II of the Federal Constitution (second issue); and

(c) Whether Parliament's powers to enact laws in relation to matters in the State List can only be exercised in the circumstances set out in arts. 76(1)(a), (b) and (c) of the Federal Constitution (third issue).

First Issue And Second Issue

[9] We will deal with the first two issues together. These concern the legislative power of the SSLA. Before we delve further, it is necessary for us to refer to the relevant provisions of the law relating to these issues. The starting point is art. 74 of the Federal Constitution which reads as follows:

A Article 74. Subject matter of Federal and State laws.

(1) Without prejudice to any power to make laws conferred on it by any other Article, Parliament may make laws with respect to any of the matters enumerated in the Federal List or the Concurrent List (that is to say, the First or Third List set out in the Ninth Schedule).

B (2) Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List.

C (3) The power to make laws conferred by this Article is exercisable subject to any conditions and restrictions imposed with respect to any particular matter by this Constitution.

(4) Where general as well as specific expressions are used in describing any of the matter enumerated in the Lists set out in the Ninth Schedule the generality of the former shall not be taken to be limited by the latter.

D

[10] It is clear that art. 74(2) of the Federal Constitution conferred the Legislature of a State to make laws with respect to any matter enumerated in the State List or even the Concurrent List. The matters enumerated in the

E State List which is relevant to the issues under discussion is item 1 which reads:

List II – State List.

1. Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Islamic law and personal and family law

F relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non charitable trusts; wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institution, trusts, charities

G and charitable institutions operating wholly within the State, Malay customs, Zakat Fitrah and Baitulmal or similar Islamic religious revenue, mosques or any Islamic public places of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters

H included in the Federal List, the constitution, organisation and procedure of Syariah Courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law; the control of propagating doctrines and beliefs among

I persons professing the religion of Islam, the determination of matters of Islamic law and doctrine and Malay custom.

[11] It was the respondent's position as well as the interveners that the impugned section was enacted pursuant to art. 74(2) read together with item 1 of the State List, Ninth Schedule of the Federal Constitution which allows the SSLA to make laws with respect to creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List. It is also their position that the impugned section is consistent with s. 2 of the Syariah Courts (Criminal Jurisdiction) Act 1965, a federal legislation conferring criminal jurisdiction to the Syariah Courts in this country in respect of offences against the precept of Islam by persons professing that religion. Section 2 of the said Act provides:

> 2. The Syariah Courts duly constituted under any law in a State and invested with jurisdiction over persons professing the religion of Islam and in respect of any of the matters enumerated in List II of the State List of the Ninth Schedule to the Federal Constitution are hereby conferred jurisdiction in respect of offences against precepts of the religion of Islam by person professing that religion which may be prescribed under any written law:
>
> Provided that such jurisdiction shall not be exercised in respect of any offence punishable with imprisonment for a term exceeding three years or with fine exceeding five thousand ringgit or with whipping exceeding six strokes or with any combination thereof.

[12] Before us, counsel for the petitioners submitted that the act of the respondent in enacting the impugned section is contrary to the constitutional framework for freedom of expression in Malaysia as enshrined under art. 10 of the Federal Constitution. It was submitted that only Parliament that can enact laws to restrict speech and expression in Malaysia. Alternatively, with regard to the SSLA's purported power to legislate with respect to "… creation and punishment of offences by persons professing the religion of Islam against precepts of that religion …" enabling it to enact the impugned section, it was submitted that the said power does not extend to matters included in the Federal List.

[13] Consequently, it was submitted that as the Federal Government: is empowered to legislate on (a) "Newspaper; publication; publishers, printing and printing presses"; (b) criminal offences based on its legislative power relating to "… criminal law and procedure …" on range of matters including "… the creation of offences in respect of any of the matters included in the Federal List or dealt with by federal law …", and as criminal offences generally related to printing are already dealt with by the federal law known as the Printing Presses and Publications Act 1984, the respondent therefore cannot enact offences on printing and printing presses.

[14] The central issue is whether the impugned section is contrary to the constitutional framework of freedom of expression as enshrined in art. 10 of the Federal Constitution. Article 10(1)(a) provides that "every citizen has the

right to freedom of speech and expression". However, art. 10(1)(a) is subject to art. 10(2) which reads:

> (2) Parliament may by law imposed –
>
> (a) on the rights conferred by paragraph (a) Clause (1) such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation or incitement to any offence.

[15] It can be seen clearly that art. 10(1)(a) of the Federal Constitution did not guarantee absolute freedom of speech and expression. This was not disputed by the petitioners, except it was argued that any such restriction can only be done by Parliament and not the Legislature of any State. It was argued that the impugned section as enacted by the SSLA, has the effect of restricting such freedom of expression which the SSLA has no jurisdiction to do so.

[16] With respect, we disagree. It is an established principle of constitutional construction that no provision of the Federal Constitution can be considered in isolation. That particular provision must be brought into view with all the other provisions bearing upon that particular subject. This court in *Danaharta Urus Sdn Bhd v. Kekatong Sdn Bhd* [2004] 1 CLJ 701; [2004] 2 MLJ 257, applied the principle of considering the Constitution as a whole in determining the true meaning of a particular provision. This court held:

> A study of two or more provisions of a Constitution together in order to arrive at the true meaning of each of them is an established rule of constitutional construction. In this regard it is pertinent to refer to *Bindra's Interpretaion of Statue* 7th Ed which says at page 947-948:
>
> > The Constitution must be considered as a whole, and so as to give effect, as far as possible, to all its provisions. It is an established canon of constitutional construction that no one provision of the Constitution is to be separated from all the others, and considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument...
>
> It follows that it would be improper to interpret one provision of the Constitution in isolation from others …

[17] Thus, in the present case, we are of the view that art. 10 of the Federal Constitution must be read in particular with arts. 3(1), 11, 74(2) and 121. Article 3(1) declares Islam as the religion of the Federation. Article 11 guarantees every person's right to profess and practise his religion and to propagate it. With regard to propagation, there is a limitation imposed by art. 11(4) which reads:

(4) State Law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.

[18] In *Mamat Daud & Ors v. The Government of Malaysia* [1988] 1 CLJ 11; [1988] 1 CLJ (Rep) 197; [1988] 1 MLJ 119, this court in its majority judgment had held that art. 11(4) is the power which enables States to pass a law to protect the religion of Islam from being exposed to the influences of the tenets, precepts and practices of other religions or even of certain schools of thoughts and opinions within the Islamic religion itself. It was also stated in that case that to allow any Muslim or groups of Muslim to adopt divergent practice and entertain differing concepts of Islamic religion may well be dangerous and could lead to disunity among Muslims and therefore could affect public order in the States. Hence, it was held that it was within the power of the State to legislate laws in order to control or stop such practices.

[19] Article 74(2), as stated earlier is the power conferred on the legislature of a State to make laws in respect to any matter enumerated in the State List, Ninth Schedule. Item 1 of the State List clearly allows the Legislature of a State for "creation and punishment of offences by persons professing the religion of Islam against precepts of that religion …". Thus, there can be no doubt that the Federal Constitution allows the Legislature of a State to enact law against the precepts of Islam.

[20] Another important provision of the law, which needs be taken into view is art. 121(1A) which was introduced in 1988. It provides that the High Court which were established pursuant to art. 121(1) of the Federal Constitution shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts; a provision clearly intended in taking away the jurisdiction of the High Court in respect of any matter within the jurisdiction of the Syariah Courts.

[21] We are of the view art. 10 is to be read harmoniously with the above-mentioned articles. There can be no doubt what the SSLA did in this case was within the constitutional framework of the Federal Constitution. Clearly the SSLA was not enacting offences on printing or printing presses. The SSLA was enacting offences against the precepts of Islam. What offences and punishment that can be enacted under the item 1 of the State List was duly considered by this court in *Sulaiman Takrib v. Kerajaan Negeri Terengganu; Kerajaan Malaysia (Intervener) & Other Cases* [2009] 2 CLJ 54 (*Sulaiman Takrib*). Abdul Hamid Mohamad CJ pointed out that the creation and punishment of offences under item 1 of the State List have four limitations:

(a) It is confined to persons professing the religion of Islam;

(b) It is against the precepts of Islam;

(c) It is not with regard to matters included in the Federal List; and

(d) It is within the limit set by s. 2 of the Syariah Courts Criminal Jurisdiction Act 1996.

[22] In *Sulaiman Takrib*, the petitioner, a Muslim was charged with offences under s. 10 and s. 14 of Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001 (Terengganu Enactment). The charge under s. 10 was for acting in contempt of a religious authority by defying or disobeying the fatwa regarding the teaching and belief of Ayah Pin that was published in the Government Gazette of the State of Terengganu on 4 December 1997. The charge framed under s. 14 was for possession of a VCD, the content of which was contrary to Hukum Syariah.

[23] One of the issues raised by the petitioner in that case was that the power to create offences under item 1 of State List of the Ninth Schedule of the Federal Constitution was limited to the creation of offences against the precepts of Islam and that offences under s. 10 and s. 14 of the Terengganu Enactment were not offences against the precepts of Islam and the Terengganu State Legislative Assembly was not empowered to enact the said provisions. It was also contended that the offences in question were "criminal law" and thus within the Federal jurisdiction to legislate.

[24] Abdul Hamid Mohamed, CJ in addressing the issue held that "precepts of Islam" include "law" or "syariah" and the Federal Constitution uses the term "Islamic Law" which in the Malay translation is translated as "Hukum Syariah". It was pointed out that all the laws in Malaysia whether Federal or State, use the term "Islamic Law" and "Hukum Syariah" interchangeably. Thus, on the offence created by s. 14 of the Terengganu Enactment, the key words "contrary to Hukum Syariah" means the same thing as precept of Islam. Even if it is not so, by virtue of the provision of the Federal Constitution, the words "Hukum Syariah" as used in Terengganu Enactment and elsewhere where offences are created must necessarily be within the ambit of "precept of Islam". Thus, it was held that the offence created by s. 10 of the Terengganu Enactment is also an offence regarding the precept of Islam. Since the offences were against the precept of Islam and since there is no similar offence in Federal law and the impugned offence cover Muslims only and pertaining to Islam only, it clearly could not be argued that they were "criminal law" as envisaged by the Federal Constitution.

[25] The decision in *Sulaiman Takrib* was followed by this court in *Fathul Bari Mat Jahya & Anor v. Majlis Agama Islam Negeri Sembilan & Ors* [2012] 4 CLJ 717 (*Fathul Bari*). In that case, the first petitioner was charged in the Syariah Subordinate Court Negeri Sembilan for an offence under s. 53(1) of the Syariah Criminal (Negeri Sembilan) Enactment 1992 (the Negeri Sembilan Enactment) for conducting a religious talk without a "tauliah", while the second petitioner was charged with abetting the offence. Both the petitioners sought to challenge the validity and constitutionality of the said s. 53. It was argued that the s. 53 was invalid for breaching art. 74(2) and

item 1, State List, Ninth Schedule of the Federal Constitution and since s. 53 did not fall within the realm of item 1, the Syariah Court of Negeri Sembilan therefore had no jurisdiction to try an offence under the section. It was further contended by the petitioners that the teaching of the religion of Islam without a "tauliah" is not an offence against the pillars or precepts of Islam and the State Legislature therefore had exceeded its legislative authority when it enacted s. 53 and made it such an offence.

[26] Arifin Zakaria CJ, speaking for the Federal Court held amongst others that the purpose of s. 53 of the Negeri Sembilan Enactment was to protect the integrity of "aqidah", "syariah" and "akhlak" which constitute the precepts of Islam. The requirement for the tauliah is necessary to ensure that only a person who is qualified to teach the religion is allowed to do so. This is a measure to stop the spread of deviant teachings among Muslims. It is commonly accepted that deviant teaching among Muslims is an offence against the precept of Islam. Hence, it follows that the State Legislature of Negeri Sembilan had acted within its legislative power in enacting s. 53 of the Negeri Sembilan Enactment.

[27] We have no reasons to depart from the previous decisions of this court in the above two cases. In the present case, the purpose of the SSLA in enacting the impugned section is clear, ie, to control religious publication which is contrary to Islam. It is also a measure to prohibit the dissemination of any wrongful belief and teaching among Muslims, through publication of any book or document or any form of record containing anything which is contrary to Islamic law. What is contrary to Islamic law is without doubt against the precepts of Islam. Thus, the SSLA was acting within its legislative power in enacting the impugned section. It is an offence against the precepts of Islam and precepts of Islam is not found in the Federal List. In consequence, there is no merit in the petitioners' argument that in enacting the impugned section, the SSLA was in fact enacting on a matter in the Federal List.

[28] Based on the above, we find that the impugned section enacted by SSLA clearly falls within the scope of precept of Islam. It is not a matter included in the Federal List and the punishment imposed is within the limit set by s. 2 of the Syariah Courts (Criminal Jurisdiction) Act 1965. The impugned section is therefore valid and not *ultra vires* the Federal Constitution.

Third Issue

[29] The third issue raised was whether Parliament's power to enact law in relation to matters in the State List can only be exercised in the circumstances set out in arts. 76(1)(a), (b) and (c) of the Federal Constitution. The said Article reads as follows:

> 76(1) Parliament may make laws with respect to any matter enumerated in the State List, but only as follows, that is to say:

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(a) for the purpose of implementing any treaty, agreement or convention between the Federation and any other country, or any decision of an international organisation of which the Federation is a member; or

(b) for the purpose of promoting uniformity of the laws of two or more States; or

B

(c) if so requested by the Legislative Assembly of any State.

[30] In light of our conclusion on the first and second issue, we are of the view that there is no real necessity to deal with the third issue. The arguments raised on the third issue was purely academic in nature and answering it would not affect the position of the parties or would not have any bearing in the outcome of this petition.

C

Conclusion

[31] In conclusion we wish to highlight that a Muslim in Malaysia is not only subjected to the general laws enacted by Parliament but also to the State laws of religious nature enacted by Legislature of a State. This is because the Federal Constitution allows the Legislature of a State to legislate and enact offences against the precepts of Islam. Taking the Federal Constitution as a whole, it is clear that it was the intention of the framers of our Constitution to allow Muslims in this country to be also governed by Islamic personal law. Thus, a Muslim in this country is therefore subjected to both the general laws enacted by Parliament and also the State laws enacted by the Legislature of a State.

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[32] For the above reasons, we hold that the impugned section as enacted by the SSLA is valid and not *ultra vires* the Federal Constitution. The petition is dismissed.

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[33] After hearing parties we make no order as to costs.

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